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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. RAYMOND BALDONADO CHAVEZ, Defendant and Appellant.	2d Crim. No. B208071 (Super. Ct. No. F320941) (San Luis Obispo County)

Raymond Baldonado Chavez appeals an order determining him to be a sexually violent predator ("SVP") and committing him to the Department of Mental Health ("Department") for an indeterminate term of treatment. (Welf. & Inst. Code, § 6600 et seq.)[1] We reject Chavez's constitutional challenges to the SVP law as amended, and affirm.

FACTS AND PROCEDURAL HISTORY

On February 8, 2007, the San Luis Obispo County prosecutor filed a petition to extend Chavez's commitment as an SVP pursuant to the sexually violent predator law, section 6600 et seq. ("Act"). The prosecutor alleged that on August 16, 2006, a jury found that Chavez met the statutory criteria for an SVP commitment, and the

[1] All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

commitment would expire on April 3, 2007. On May 7, 2007, the trial court found probable cause existed that Chavez met the SVP criteria, and it set the matter for trial.

Doctor Shoba Sreenivasan, a psychologist and evaluator for the Department, testified that she reviewed Chavez's prison and hospital records and had interviewed him previously. She opined that he suffers from paraphilia NOS, an anti-social personality disorder, and alcohol dependence. Sreenivasan stated that Chavaz's paraphilia includes sexual sadism and domination over his victims. She testified that he was verbally abusive, hostile, and profane towards staff members at the state hospital, and had toppled over another patient in a wheelchair.

Sreenivasan described the sexual offenses committed by Chavez. In 1965, he was convicted of sodomy for an assault committed upon a fellow prison inmate. In 1975, he was convicted of the rape of a 76-year-old hotel manager. As the manager showed Chavez a hotel room, he grabbed and choked her, hit her in the face, and raped her. Chavez's wife was waiting in their vehicle at the time. In 1990, he attempted to rape his wife's coworker. The victim's husband rescued her. In 1991, at the age of 51, Chavez raped another Alcoholics Anonymous member. For the 1990 and 1991 crimes, Chavez was convicted of attempted rape, sexual battery, rape, oral copulation, and attempted oral copulation.

Sreenivasan opined that Chavez met the SVP criteria, including presenting a serious risk of reoffending. She acknowledged that he was 68 years old at time of trial, and suffers from many medical conditions. Sreenivasan pointed out, however, that Chavez would not take prescribed medications (except for pain), did not participate in the SVP program at the hospital, was vulgar and profane toward staff members, and had threatened sexual assaults ("I am going to fuck you in the ass . . . . [¶] I want some pussy. . . . I will have some ass here . . . .").

Doctor Craig Updegrove, a clinical psychologist, interviewed Chavez and opined that he met the SVP criteria. Updegrove opined that Chavez suffers from paraphilia NOS, anti-social personality, and alcohol dependence. He stated that Chavez's mental disorder impacts his emotional volitional capacity despite incarceration and other

sanctions. Updegrove opined that Chavez presents a high risk for reoffending, pointing out that he committed forcible sex offenses when he was 50 and 51 years old.

Doctor Theodore Donaldson, a clinical and forensic psychologist, interviewed Chavez and reviewed his criminal and hospital records. He opined that Chavez suffers from only a trace of a personality disorder, but not paraphilia. Donaldson testified that given Chavez's age, he presents a slight risk of reoffending.

Doctor Mary Jane Adams, a clinical psychologist, interviewed Chavez and reviewed his criminal and hospital records. She opined that he does not suffer from paraphilia but is alcohol-dependent. Adams concluded that Chavez does not present a high risk of reoffending given his age and his many debilitating illnesses.

Statutory Amendments

In 2006, the Act was amended first by the Legislature, and then by the electorate with the passage of Proposition 83. The amended Act provides that an individual who is determined to be an SVP must be "committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility." (§ 6604.) Once committed, the individual must receive an annual examination of his mental condition. (§ 6605, subd. (a).) After the examination, the Department must file a report with the trial court stating whether the individual continues to meet the definition of an SVP or whether conditional or unconditional release of the individual would adequately protect the community. (*Ibid.*) The individual may, however, petition the trial court for conditional or unconditional release without the "recommendation or concurrence" of the Department. (§ 6608, subd. (a).) In so doing, he is entitled to the assistance of counsel. (*Ibid.*) An SVP's petition that is not authorized by the Department is determined by the court, without a jury. (§ 6608, subd. (d).) As a result of the 2006 amendments, an SVP remains committed, either fully or in a conditional release setting, "until he successfully bears the burden of proving he is no longer an SVP or the Department of Mental Health determines he no longer meets the definition of an SVP." (*Bourquez v. Superior Court* (2007) 156

Cal.App.4th 1275, 1287.) The amended Act applies to Chavez's recommitment proceeding.

On March 28, 2008, the trial court found that Chavez is an SVP within the meaning of the amended Act, beyond a reasonable doubt. The court ordered him committed to the Department for an indeterminate term of treatment.

Chavez appeals and contends that: 1) insufficient evidence exists that he is an SVP; 2) an indeterminate commitment and shifting of the burden of proof violates constitutional guarantees of due process of law; 3) an indeterminate commitment violates constitutional guarantees against ex post facto laws, double jeopardy, and cruel and unusual punishment; 4) an indeterminate commitment with limited judicial review violates principles of equal protection of the law; 5) the amended Act violates his constitutional right to petition for redress of grievances; and 6) Proposition 83 violated the single-subject rule applicable to ballot initiatives.

Many of the issues that Chavez raises here are pending before our Supreme Court in *People v. McKee* (2008) 160 Cal.App.4th 1517, review granted July 9, 2008, No. S162823; *People v. Johnson* (2008) 162 Cal.App.4th 1263, review granted August 13, 2008, No. S164388; *People v. Riffey* (2008) 163 Cal.App.4th 474, review granted August 20, 2008, No. S164711; *People v. Boyle* (2008) 164 Cal.App.4th 1266, review granted October 1, 2008, No. S166167; and *People v. Garcia* (2008) 165 Cal.App.4th 1120, review granted October 16, 2008, No. S166682.

DISCUSSION

I.

Chavez argues there is insufficient evidence that he meets the SVP statutory criteria. In particular, he challenges the findings that he has a mental disorder and that he is likely to reoffend. Chavez points out that he has not reoffended since 1991, and that for a prior 10-year period, he did not reoffend. He adds that he suffers from many debilitating physical illnesses.

In determining the sufficiency of evidence to support a finding that a person is an SVP, we review the entire record most favorably to the judgment to determine if

there is reasonable and credible evidence to support the finding of the trier of fact. (*People v. Sumahit* (2005) 128 Cal.App.4th 347, 352.) We do not reweigh the evidence nor do we redetermine the credibility of witnesses. (*Ibid.*)

Sufficient evidence supports the findings of the trial court that Chavez met the SVP criteria. Paraphilia NOS qualifies as a mental disorder within the meaning of the Act and the amended Act. (*People v. Felix* (2008) 169 Cal.App.4th 607, 617.) Chavez committed sexual offenses against non-consenting victims over a lengthy period of time. Despite repeated incarceration and a divorce, Chavez continued to reoffend.

Chavez has refused prescribed medications (except for pain medication), declined to participate in treatment at the hospital, and made sexually threatening remarks to female hospital employees. Although Chavez has not reoffended since 1991, he has been in custody. (§ 6600, subd. (d) [finding of danger to others does not require proof of a recent overt act while offender is in custody].) During the period of his non-incarceration, Chavez sexually harassed his wife's coworker for five years. The trial court considered and weighed the opinions of the expert witnesses, and credited the testimony of the prosecution's witnesses. We do not reweigh the evidence or redetermine witness credibility. (*People v. Sumahit*, *supra*, 128 Cal.App.4th 347, 352.)

II.

Chavez contends that the amended Act violates due process of law because following his indeterminate commitment, he will bear the burden of establishing by a preponderance of the evidence that he no longer presents a danger to others. (§ 6608, subds. (d), (i).) He also claims the amended Act is constitutionally infirm because it does not provide for periodic hearings regarding continued commitment. Chavez relies in part upon the Supreme Court decisions *Addington v. Texas* (1979) 441 U.S. 418, 432-433 [state must establish insanity and dangerousness warranting confinement by clear and convincing evidence] and *Foucha v. Louisiana* (1992) 504 U.S. 71, 79 [due process requires constitutionally adequate procedures to confine civil committee]. Chavez asserts that the amended Act makes it difficult for a committee to obtain release from indefinite commitment in circumstances not involving Department-authorized petitions. We

disagree. In view of the statutory requirement that the state initially prove an SVP's status beyond a reasonable doubt, Chavez constitutionally bears the burden of proving by a preponderance of the evidence that he no longer presents a danger to others by reason of his mental disorder. Moreover, an SVP may request the appointment of a mental health expert regarding his annual review. (§ 6605, subd. (a).) Section 6608 does not preclude such appointment upon a showing of good cause concerning a non-authorized petition.

In *Jones v. United States* (1983) 463 U.S. 354, 363-368, the Supreme Court considered two important factors regarding indefinite civil commitment. First, it considered dangerousness as established by a criminal conviction obtained by proof beyond a reasonable doubt. (*Id.* at pp. 363-365.) Second, it considered mental illness as established by a preponderance of the evidence that the acquittee was insane at the time of his act. (*Id.* at pp. 366-368.) Here the court made similar findings at Chavez's recommitment hearing. In determining that Chavez was an SVP, the court necessarily found by proof beyond a reasonable doubt that he: 1) had been convicted of committing sexually violent offenses against one or more victims; 2) had a diagnosed mental disorder; and 3) as a result of that diagnosed mental disorder, is a danger to the health and safety of others because it is likely that he will engage in sexually violent predatory behavior. Thus the court found that Chavez was both dangerous and mentally ill by evidence established beyond a reasonable doubt. As recognized in *Jones*, due process is flexible and calls for different procedural protections in different situations. (*Id.* at pp. 367-368.)

Moreover, the amended Act sufficiently protects Chavez's due process rights after his initial commitment. His burden of proof by a preponderance of the evidence is the same burden of proof that the Supreme Court implicitly approved in *Jones v. United States*, *supra*, 463 U.S. 354, 357, 368-370, for insanity acquittee review hearings. As the *Jones* review hearing is analogous to a petition for release pursuant to the amended Act, we are satisfied that the burden placed on Chavez to prove his right to release by a preponderance of the evidence in hearings involving petitions not authorized

by the Department does not violate his constitutional rights to due process of law. We also note that a committee retains the right to seek release by filing a petition for writ of habeas corpus. (§ 7250 ["Any person who has been committed is entitled to a writ of habeas corpus, upon a proper application"]; *People v. Talhelm* (2000) 85 Cal.App.4th 400, 404-405.)

III.

Chavez argues that an indeterminate term of commitment is punitive in nature, and violates constitutional guarantees against ex post facto laws, double jeopardy, and cruel and unusual punishment. He acknowledges that the Act is regarded as a civil commitment scheme, but asserts that it is punitive in purpose and effect. (*Kansas v. Hendricks* (1997) 521 U.S. 346, 361 [civil label not dispositive and may be disproved by "clearest proof" that statute is punitive in purpose or effect].) Chavez points to the Voter Information Guide stating that Proposition 83 was intended to strengthen and improve the laws that punish and control sexual offenders. (Voter Information Guide, Gen. Elect. (Nov. 7, 2006) text of Prop. 83, § 31, p. 138; *People v. Allen* (2008) 44 Cal.4th 843, 861-862.) He adds that the amended Act provides for indeterminate commitment without periodic judicial review at which the prosecution bears the burden of proof, and it expands the number of crimes making a defendant eligible for commitment.

The United States Supreme Court and our Supreme Court have rejected challenges to the Kansas SVP law and the Act respectively on ex post facto grounds. (*Kansas v. Hendricks*, *supra*, 521 U.S. 346, 370-371; *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1170-1179.) For several reasons, we conclude that the amended Act does not violate ex post facto, double jeopardy, or cruel and unusual punishment guarantees. (*People v. Chambless* (1999) 74 Cal.App.4th 773, 776, fn. 2 ["[I]t is well settled that double jeopardy and cruel and unusual punishment principles do not apply to civil commitment proceedings because they are not penal in nature"].)

First, the amended Act retains the basic structure of civil commitment procedures to treat persons who have committed sexually violent acts. Its placement in the Welfare and Institutions Code, rather than the Penal Code, is evidence of legislative

intent that the amended Act is a civil commitment scheme rather than criminal legislation. (*Kansas v. Hendricks*, *supra*, 521 U.S. 346, 361 [reviewing court defers to stated legislative intent unless clear proof that statutory scheme is punitive]; *Hubbart v. Superior Court*, *supra*, 19 Cal.4th 1138, 1171 [same].)

Second, commitment of a dangerous, mentally ill person is a legitimate government objective that has long been viewed as nonpenal. (*Kansas v. Hendricks*, *supra*, 521 U.S. 346, 363; *Hubbart v. Superior Court*, *supra*, 19 Cal.4th 1138, 1173.) Third, treatment of the SVP remains a goal of the amended Act. (§ 6604.) Further, duration of commitment is not evidence of a punitive intent where it is linked to the commitment purpose of holding a person until his mental disorder no longer poses a threat to others. (*Hendricks*, at pp. 363-364; *Hubbart*, at pp. 1173, 1176.) Under the Act and the amended Act, once a committee is determined to no longer meet the SVP criteria, he is entitled to release. Fourth, the amended Act allows a jury trial at the initial commitment and on any petition authorized by the Department. (§§ 6603, subd. (a), 6604, 6605, subd. (d).) The circumstance that the amended Act does not allow a jury trial on a petition filed by an SVP without authorization from the Department does not render the amended Act a punitive statute.

Moreover, in *People v. Allen*, *supra*, 44 Cal.4th 843, 861-862, our Supreme Court rejected the contention that the preamble to Proposition 83 established an intent to punish, not treat, SVP's. "Although Proposition 83 made amendments to both the criminal and the civil schemes, it recognized the different purposes of these two schemes . . . ." (*Ibid.*)

In sum, the underlying purposes and intent of the law have not changed. The amended Act still requires a judicial finding that the person detained has committed a qualifying offense and suffers from a diagnosed mental disorder making it likely that he will engage in sexually violent criminal behavior. (§ 6600, subd. (a)(1).) Like the initial Act, the amended Act does not violate federal and state prohibitions against ex post facto laws, double jeopardy, or cruel and unusual punishment. (*People v. Taylor* (2009) 174

Cal.App.4th 920, 936-937.) The commitment remains civil in nature, not punitive. (*People v. Chambless*, *supra*, 74 Cal.App.4th 773, 776, fn. 2.)

IV.

Chavez argues that the amended Act denies him equal protection of the law as afforded by the federal and California Constitutions, because he was committed for an indeterminate term and bears the burden to establish, without benefit of a jury trial, that he no longer meets the SVP criteria. In contrast, he points out that persons committed under other civil commitment statutes are committed for fixed terms and receive the benefit of a jury trial at which the state bears the burden to prove that their commitments must be extended. Chavez asserts that persons committed under the amended Act, the Mentally Disordered Offender Act (Pen. Code, § 2960 et seq. (MDO's)), and persons found not guilty by reason of insanity (*id.*, § 1026 et seq. (NGI's)) are similarly situated for purposes of evidentiary burdens and jury trial rights in recommitment proceedings. He adds that reviewing courts must strictly scrutinize involuntary civil commitment schemes because they affect a fundamental liberty interest. (*Hubbart v. Superior Court*, *supra*, 19 Cal.4th 1138, 1153, fn. 20; *People v. Buffington* (1999) 74 Cal.App.4th 1149, 1155-1156 [a legislative distinction that "involves a suspect classification or infringes on a fundamental interest . . . is strictly scrutinized and is upheld only if it is necessary to further a compelling state interest"].)

We reject Chavez's argument. The contention that SVP's are similarly situated to MDO's and NGI's overlooks significant differences in the commitment schemes and their purposes concerning the degree and danger that persons committed under the respective schemes present. The contention also ignores the severity of mental illness, prognosis, and amenability to treatment of persons in the different groups. The Act concerns "'a small but extremely dangerous group of sexually violent predators . . . .'" (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) Other commitment schemes involve a broad range of mental illness and related conduct.

Moreover, an SVP is civilly committed in part because of the likelihood that he will engage in sexually violent criminal behavior upon release. SVP committees

present a substantial danger to others, have a very high recidivism rate, require long-term treatment, and have only a limited likelihood of improvement. Committees under other statutory schemes include those suffering mental illnesses of short duration with greater potential to be successfully treated with medication or other treatment. (See e.g., *People v. Buffington*, *supra*, 74 Cal.App.4th 1149, 1163 [determining that SVP's and MDO's are not similarly situated for purposes of equal protection based upon differing treatment requirements].)

Even if we were to assume that the committee groups are similarly situated, their disparate treatment furthers a compelling state interest. SVP's receive an indeterminate term of civil commitment because they are less likely to be cured and more likely to reoffend than other civil committees. The law deems them more dangerous than persons who are committed under other civil commitment schemes. "The problem targeted by [the former Act] is acute and the state interests - protection of the public and mental health treatment - are compelling." (*Hubbart v. Superior Court*, *supra*, 19 Cal.4th 1138, 1153, fn. 20.) The purpose of the amended Act is to protect the civil rights of the SVP committee and, at the same time, protect society and the system from unnecessary or frivolous jury trials when insufficient evidence exists to suggest a change in the committee. (*Bourquez v. Superior Court*, *supra*, 156 Cal.App.4th 1275, 1287.) The particular dangers that SVP's present and their limited success in treatment justify the state treating them different from other civilly committed persons. We conclude the disparate treatment does not offend federal or state constitutional guarantees of equal protection of the law.

V.

Chavez asserts that the limitations placed on his right to petition for release under the amended Act violate his First Amendment right to petition the courts for redress of grievances. Specifically, Chavez complains that an SVP may file a petition for release pursuant to section 6605 only if the Department determines he is no longer an SVP; a petition pursuant to section 6608, which may be filed without the Department's concurrence, contains no provision for the appointment of mental health expert witnesses

and the SVP bears the burden of proof; and the trial court may summarily deny an SVP's petition without a hearing if the court determines it is frivolous.

The right of access to the courts is an aspect of the First Amendment right to petition the government for redress of grievances. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 647, disapproved on other grounds by *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5.) Chavez has not established, however, that the amended Act violates this right.

Pursuant to section 6608, subdivision (a), an SVP has the right to counsel. Although section 6608 does not expressly provide for the appointment of a defense expert for an indigent detainee, the right is provided by section 6605, subdivision (a). Moreover, an SVP does not have a constitutional right to an evidentiary hearing on a petition for release that the court has determined is frivolous. (*Church of Scientology v. Wollersheim, supra*, 42 Cal.App.4th 628, 648, fn. 4 ["The right to petition is not absolute, providing little or no protection for baseless litigation or sham or fraudulent actions"].) Finally, Chavez offers no authority suggesting that his constitutional right to access to the courts requires the government to prove beyond a reasonable doubt at regular intervals that he remains an SVP.

VI.

Chavez argues that Proposition 83 violated the single-subject rule applicable to ballot initiatives because it is assertedly "a scattered shotgun approach to diverse topics [relating] . . . to sex offenses." He points out that the proposition contains provisions expanding the definition of, increasing punishment for, and prohibiting probation for certain sex offenses; eliminating custody credits for inmates convicted of certain sex offenses; extending the parole period for sex offenders; monitoring the whereabouts of sex offenders and barring them from living within 2000 feet of a school or park; making more offenders eligible for SVP commitment; and requiring that SVP's be committed for an undetermined period of time.

Article II, section 8, subdivision (d) of the California Constitution states: "An initiative measure embracing more than one subject not be submitted to the electors

or have any effect." An initiative measure does not violate the single-subject requirement, however, if its parts are reasonably germane to each other and to the general purpose of the initiative. (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 575.) It is sufficient if the various provisions reasonably relate to a common theme or purpose. (*Ibid.*)

Here the initiative reflects a reasonable and common sense relationship among its various components in furtherance of a common purpose. (*Manduley v. Superior Court*, *supra*, 27 Cal.4th 537, 575 [statement of general rule].) The component parts of Proposition 83 bear a reasonable relationship to the stated purpose of regulating and treating sex offenders. Although the SVP component of Proposition 83 is civil in nature, it is related to the criminal justice purpose stated as the goal of the initiative - "'to strengthen and improve the laws that punish and control sexual offenders.'" (*Bourquez v. Superior Court*, *supra*, 156 Cal.App.4th 1275, 1282.) Proposition 83 does not violate the single-subject rule.

The judgment (order) is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

Ginger E. Garrett, Judge

Superior Court County of San Luis Obispo

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